

Introduced by Senator Escutia

February 22, 2005

An act to amend Sections 12996.5 and 12999.5 of, and to add Section 13000.2 to, the Food and Agricultural Code, relating to pest control.

LEGISLATIVE COUNSEL'S DIGEST

SB 879, as introduced, Escutia. Pest control: violations.

Existing law generally regulates pest control and provides that the Attorney General may bring an action for civil penalties against any person who violates these provisions, as specified, or any regulation issued pursuant to them, however, in lieu of civil prosecution, the Director of Pesticide Regulation may levy a civil penalty of not more than \$1,000, or \$5,000, for each violation as specified. The county agricultural commissioner or the director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to these provisions.

This bill would require that initiation and completion of human illness investigations in connection with these provisions take no longer than 60 days. This bill would require that civil penalties be levied for any violation that creates, or poses a reasonable possibility of creating, an actual health or environmental hazard, or for a failure to comply with provisions specifying requirements for protecting people, animals, and property, as specified. This bill would provide that violation of a cease and desist order, as specified, shall constitute a serious and separate offense per aggrieved individual. This bill would define aggrieved individual for the purpose of these provisions, and would provide an aggrieved individual the right to be notified of a proposed action before a civil penalty is levied, to request a hearing, and to appeal the decision.

Because this bill would increase the duties of local officials, this bill would impose a state-mandated local program.

This bill would also provide that, notwithstanding any other provision of law, any violation of provisions related to pest control operations and agricultural chemicals that provides for a civil penalty to be assessed for a violation may, as an alternative, be recovered through a civil action brought by a person harmed by the actions or inaction of the violator. In addition, this bill would provide that any person who is injured or threatened with injury pursuant to these provisions, as specified, shall be entitled to injunctive relief.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12996.5 of the Food and Agricultural
2 Code is amended to read:
3 12996.5. (a) For the purposes of this chapter:
4 (1) "Office" means the Office of Environmental Health
5 Hazard Assessment.
6 (2) "Department" means the Department of Pesticide
7 Regulation.
8 (3) "Certified Unified Program Agency" or "CUPA" means
9 the agency certified by the Secretary for Environmental
10 Protection to implement the unified program specified in Chapter
11 6.11 (commencing with Section 25404) of Division 20 of the
12 Health and Safety Code within a jurisdiction.
13 (4) "Agency" means the California Environmental Protection
14 Agency.
15 (5) "Nonoccupational" means that the person exposed to the
16 pesticide was not at the time of the exposure performing work as
17 an employee.

(6) “Acute” means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration.

(7) “Uncompensated medical care” means the cost of care not covered by any other program, including, but not limited to copayments for medical insurance, Healthy Families Program, or Medi-Cal. Reimbursed medical costs shall not exceed 125 percent of the Medi-Cal reimbursement rates.

(8) “Aggrieved individual” means an individual harmed by the action or inaction of the violator.

(b) The exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981, or 14005, that causes acute illnesses or injury, shall constitute a separate violation of the statute or regulation.

SEC. 2. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) ~~In~~Initiation and completion of human illness investigations by the director or commissioner shall take no longer than 60 days unless explanation of the need for greater time is provided. Following initial notification to the director, the commissioner must initiate priority episode investigations within two working days and submit a preliminary update to the director and any aggrieved individual within 15 days.

(b) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. Civil penalties shall be levied for any violation that creates an actual health or environmental hazard or poses a reasonable possibility of creating a health or environmental effect. The exposure of each individual to an actual health or environmental hazard or reasonable possibility of exposure shall constitute a separate violation of the section or regulation. Failure to comply with

1 *codes and regulations that specify requirements for protecting*
2 *people, animals, and property from pesticide drift contact,*
3 *providing and maintaining decontamination facilities and*
4 *supplies, protective equipment, training, and hazard*
5 *communication for pesticide handlers and fieldworkers is known*
6 *to pose an actual health hazard to those workers and their*
7 *families. Any violation determined by the commissioner to be a*
8 *serious violation as defined in Section 6130 of Title 3 of the*
9 *California Code of Regulations is subject to a fine of not more*
10 *than five thousand dollars (\$5,000) for each violation. Violation*
11 *of a cease and desist order issued under authority of Sections*
12 *13101 and 13102 of the Food and Agricultural Code shall*
13 *constitute a serious and separate offense per aggrieved*
14 *individual. It is unlawful and grounds for denial of a permit*
15 *under Section 14008 for any person to refuse or neglect to pay a*
16 *civil penalty levied pursuant to this section once the order is*
17 *final.*

18 ~~(b)~~

19 (c) If a person has received a civil penalty for pesticide drift in
20 a school area subject to Section 11503.5 that results in a serious
21 violation as defined in subdivision-~~(a)~~ (b), the commissioner shall
22 charge a fee, not to exceed fifty dollars (\$50), for processing and
23 monitoring each subsequent pesticide application that may pose a
24 risk of pesticide drift made in a school area subject to Section
25 11503.5. The Agricultural Commissioner shall continue to
26 impose the fee for each subsequent application that may pose a
27 risk of drift, until the person has completed 24 months without
28 another serious violation as defined in subdivision-~~(a)~~ (b).

29 ~~(e)~~

30 (d) Before a civil penalty is levied, *any aggrieved individual*
31 *and the person charged with the violation shall be given a written*
32 *notice of the proposed action including the nature of the violation*
33 *and the amount of the proposed penalty, and shall have the right*
34 *to request a hearing within 20 days after receiving notice of the*
35 *proposed action. A notice of the proposed action that is sent by*
36 *certified mail to the last known address of the person charged*
37 *shall be considered received even if delivery is refused or the*
38 *notice is not accepted at that address. If a hearing is requested,*
39 *notice of the time and place of the hearing shall be given at least*
40 *10 days before the date set for the hearing. At the hearing, the*

1 *aggrieved individual and the person* shall be given an
2 opportunity to review the commissioner's evidence and to
3 present evidence on his or her own behalf. If a hearing is not
4 timely requested, the commissioner may take the action proposed
5 without a hearing.

6 ~~(d)~~

7 *(e) If the aggrieved individual or person* upon whom the
8 commissioner levied a civil penalty requested and appeared at a
9 hearing, the *aggrieved individual or person* may appeal the
10 commissioner's decision to the director within 30 days of the
11 date of receiving a copy of the commissioner's decision. The
12 following procedures apply to the appeal:

13 (1) The appeal shall be in writing and signed by the appellant
14 or his or her authorized agent, state the grounds for the appeal,
15 and include a copy of the commissioner's decision. The appellant
16 shall file a copy of the appeal with the commissioner at the same
17 time it is filed with the director.

18 (2) The appellant and the commissioner may, at the time of
19 filing the appeal or within 10 days thereafter or at a later time
20 prescribed by the director, present the record of the hearing
21 including written evidence that was submitted at the hearing and
22 a written argument to the director stating grounds for affirming,
23 modifying, or reversing the commissioner's decision.

24 (3) The director may grant oral arguments upon application
25 made at the time written arguments are filed.

26 (4) If an application to present an oral argument is granted,
27 written notice of the time and place for the oral argument shall be
28 given at least 10 days before the date set therefor. The times may
29 be altered by mutual agreement of the appellant, the
30 commissioner, and the director.

31 (5) The director shall decide the appeal on the record of the
32 hearing, including the written evidence and the written argument
33 described in paragraph (2), that he or she has received. If the
34 director finds substantial evidence in the record to support the
35 commissioner's decision, the director shall affirm the decision.

36 (6) The director shall render a written decision within 45 days
37 of the date of appeal or within 15 days of the date of oral
38 arguments or as soon thereafter as practical.

39 (7) On an appeal pursuant to this section, the director may
40 affirm the commissioner's decision, modify the commissioner's

1 decision by reducing or increasing the amount of the penalty
2 levied so that it is within the director's guidelines for imposing
3 civil penalties, or reverse the commissioner's decision. ~~Any civil~~
4 ~~penalty increased by the director shall not be higher than that~~
5 ~~proposed in the commissioner's notice of proposed action given~~
6 ~~pursuant to subdivision (c).~~ A copy of the director's decision
7 shall be delivered or mailed to the appellant and the
8 commissioner.

9 (8) Any *aggrieved individual or person* who does not request
10 a hearing pursuant to subdivision ~~(c)~~ (d) may not file an appeal
11 pursuant to this subdivision.

12 (9) Review of a decision of the director may be sought by the
13 appellant within 30 days of the date of the decision pursuant to
14 Section 1094.5 of the Code of Civil Procedure.

15 ~~(e)~~

16 (f) The commissioner may levy a civil penalty pursuant to
17 subdivisions ~~(a), (c), and (d)~~ (b), (d), and (e) against a person
18 violating paragraph (1), (2), or (8) of subdivision (a) of Section
19 1695 of the Labor Code, which pertains to registration with the
20 commissioner, carrying proof of that registration, and filing
21 changes of address with the commissioner.

22 ~~(f)~~

23 (g) After the exhaustion of the appeal and review procedures
24 provided in this section, the commissioner or his or her
25 representative may file a certified copy of a final decision of the
26 commissioner that directs the payment of a civil penalty and, if
27 applicable, a copy of any decision of the director or his or her
28 authorized representative rendered on an appeal from the
29 commissioner's decision and a copy of any order that denies a
30 petition for a writ of administrative mandamus, with the clerk of
31 the superior court of any county. Judgment shall be entered
32 immediately by the clerk in conformity with the decision or
33 order. No fees shall be charged by the clerk of the superior court
34 for the performance of any official service required in connection
35 with the entry of judgment pursuant to this section.

36 SEC. 3. Section 13000.2 is added to the Food and
37 Agricultural Code, to read:

38 13000.2. (a) This section shall be known and may be cited as
39 the Pesticide Health and Safety Enforcement Act of 2005.

(b) Notwithstanding any other provision of law, any provision of this code specified in subdivision (e) that provides for a civil penalty to be assessed and collected by the director or commissioner for a violation specified in subdivision (e), may, as an alternative, be recovered through a civil action brought by an aggrieved individual on behalf of himself or herself or other current or former aggrieved individuals pursuant to the procedures specified in subdivision (f).

(c) In addition to, and entirely separate from, any other cause of action established pursuant to any other provision of law, any individual injured or threatened with injury or illness by any serious violation of a provision specified in subdivision (b) of Section 12999.5, or by any violation of a regulation promulgated thereunder, shall be entitled to injunctive relief in any court of competent jurisdiction.

(d) For purposes of this section, a person shall be deemed to be “injured” or “threatened with injury” if there has been either injury or illness in fact or there is a reasonably foreseeable risk of any bodily harm or illness to any current or former aggrieved individual.

(e) The provisions of subdivision (b) or (c) shall apply to any alleged violation of Division 6 (commencing with Section 11401) or Division 7 (commencing with Section 12500) of the Food and Agricultural Code, related to pesticides and any regulations adopted pursuant to those provisions.

(f) In any action by an aggrieved individual seeking recovery of a civil penalty available under subdivision (b), a court may award a lesser amount than the maximum civil penalty amount specified if, based upon the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive, or confiscatory. The court shall award reasonable attorney’s fees and costs to a prevailing plaintiff in any action arising under subdivisions (b) or (c).

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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